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has no economic justification for seeking special favors. But in the field of international trade this is not completely true. The world is too far from its normal axis to expect individual traders to stand on their own feet in foreign markets to as great an extent as if they were selling or buying at home. It is this phase of the situation which is receiving the attention of the President and his advisers and it is to the promotion of all legitimate foreign trade activities that the influence and assistance of our governmental machinery is to be thrown.

There are a number of ways in which the government has already taken action for the relief of foreign trade, one of which is the lengthening to six months of the eligible bankers' acceptances which Federal reserve banks are now permitted to purchase. This doubling of the former period opens to the foreign trade of the country a great reservoir of elastic and quickly obtainable credit, and while there has been every necessity for measures leading to a reduction of inflation in the volume of Federal reserve currency, it may well be doubted whether the refusal of this benefit to the country's foreign trade would not have been far more harmful than any slight prolonging of the inflationary period which may result from this loosening of the restrictions surrounding eligible acceptances.

The statements which have been made in various Washington dispatches concerning the criticisms said to have been made of the foreign loans offered in the American market on the ground that no obligation was imposed for the spending of the proceeds in the United States are evidently founded on a lack of knowledge concerning present world finances. It is the wish of everybody that in these days of scarcity of investment capital all the resources of our investment market should be used in ways that will benefit American enterprise. But that is exactly what these foreign loans are doing, and doing to a much greater extent than the critics of the loans are aware.

Under present world conditions, the loans that have been offered here can scarcely be used in any way except to purchase supplies here for shipment abroad. If the capital itself were being exported the fact would be apparent through the figures of gold shipments, but the fact is that no such gold shipments are being made. On the contrary, gold continues to flow into the United States on an unprecedented scale, so much so that its presence here is a matter of doubtful benefit to our banking system and our national credit fabric. It is not any advantage to foreign countries to float loans in this market for the purpose of securing gold to ship elsewhere, as is clearly shown by the fact that all parts of the world are now paying shipping and insurance charges on actual stocks of gold for shipments to this country to be exchanged for our goods.

Our efforts in behalf of foreign countries in co-operating with them for the renewal of industrial activity must come through two principal sources, the extension of credit to foreign purchasers of our products and the purchase here of foreign securities. There is plenty of room for all the activities that are likely to take place in either direction, and all the assistance which the national government can give will be needed to make the effort equal to the emergency. The present total of floating and unliquidated indebtedness on merchandise account is so great that the resources of individual exporters are not capable of further expansion at this time, while commercial banks are unwilling to tie up their funds in credit operations requiring longer loans than sound banking practice allows. The remedy is through approach to the general investment resources of the country, which can safely and profitably handle the negotiable instruments incidental to the financing of foreign trade. This can be accomplished through the sale of foreign bond issues to the investors of the country and through the machinery of the Edge law banks, which are functioning satisfactorily so far, but whose volume of business is far below that which the situation affords.

It is clear that the machinery has been constructed by means of which American resources can be made available to this all-important work. It is also clear that after two years of more or less indistinct understanding on the part of the general public as to America's proper place in this great work of world rehabilitation we have now reached a point where all sensible proposals for betterment are receiving intelligent and sympathetic consideration. All that now remains is to get everybody to pull together so that the world may again start on its busy and happy road to a better and more comfortable era.

LIMITATIONS ON THE FUNCTIONS OF INTERNATIONAL COURTS

By EDWIN M. BORCHARD
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Members of the American Peace Society, devoted to the cause of justice between States, will be interested in this expression of the difficulties to be overcome before the nations can have their Supreme Court for the adjudication of their justiciable differences. This address, with its views contrary to the teachings of the American Peace Society, was delivered at the meeting of the American Academy of Political and Social Science in Philadelphia, May 14, 1921.—THE EDITOR.

MUCH of the discussion on the desirability and feasibility of an international court has been based upon the premise that a court would furnish a substitute for war; that nations wanted a court for the settlement of their disputes, and that the actual establishment of a court would persuade nations to submit their differences for adjudication. The topic on the program of this afternoon's session might indicate a belief that the debatable or open questions concern the functions of a court already created and the means necessary to carry its awards into execution. It will be my necessary, but ungrateful, duty to dispel the illusions and the misconceptions of fact involved in the assumptions of the major premise above mentioned.

No one would discourage the judicial settlement of disputes, and the desirability of such adjustment has been generally admitted by thinking men. The devoted efforts of certain societies and organizations for the establishment of an international court, the promise of certain statesmen to build a new world order upon the

basis of such a court, and a widespread sentimental faith in the efficacy of the judicial process in settling the issues that arise among organized groups have served, I believe, to arouse expectations that cannot be met and to confuse rather than enlighten the public mind. Inasmuch as progress can rarely begin from misunderstanding, it has seemed to me more useful to examine the manifest limitations upon the functions of an international court, than to extol the virtues of a court still to be created; my belief being that knowledge of the facts as they are—at least as my study discloses them—will prove of greater practical utility than an indulgence in the ideology of facts as they ought to be.

1. The belief that a judicial court would furnish a substitute for war has been one of the most common of the assumptions prevailing among important groups in many countries. The example is cited of the readiness and effectiveness with which our Supreme Court decides issues between States of the Union, and the conclusion is drawn that obviously the same method could be adopted among the nations. Nothing could, in my opinion, be more erroneous. I have shown elsewhere that the existing order of international life—at least among the larger powers—is conditioned upon a continual struggle for economic advantage; in the preservation of home markets by tariffs and discriminations against more favored competitors; in the endeavor to capture foreign markets against the competition of commercial rivals; in the assurance of a steady and cheap supply of raw materials on the part of manufacturing nations, leading to competing efforts to control backward areas, colonies, protectorates, mandatories, and other fields of investment, and to acquire the incidental machinery and equipment necessary to make this enterprise successful,—merchant fleets, cables, trade routes, coaling and oil stations, and, finally, armies, navies, and alliances. With national security and economic prosperity the keynote and motive, raw materials and markets the major aims, and the instrumentalities just mentioned as the minor objectives, a picture is presented of the principal operative forces and factors which condition and shape international relations. Foreign policy is fashioned to the maintenance of supremacy in the continual struggle for national aggrandizement, of which these forces and factors, in varying degree, constitute the main and essential elements.

Bearing this in mind, it will be apparent that the issues created by this uninterrupted competition for advantage—supported by the people of each country on the very highest justification of self-preservation and prosperity—beget conflicts of interest which are not legal, but economic and political in character. Whether the Argentine or the Chinese market shall be captured by British, German, French, or American commerce; whether the unsuccessful competitors will become reconciled to their loss of markets; whether the coaling and cable stations of the world are too largely controlled by certain nations for the safety of the foreign trade of other countries; in what degree the raw materials of the mandated territories and the colonies of the world are to be monopolized by the countries in immediate control—these questions, merely typical of the many that agitate the nations, present no issue of right or wrong which can be settled by an international court, any more than can the rivalry between two ardent youths for the affections of a fair damsel. Yet it is these very conflicts of interest that furnish the most effective causes of war. Is it not apparent, therefore, that so long as international trade implies rivalry between national units organized politically and commercially with all the instruments of unfair competition, the hope of an international court as a substitute for war rests upon the weakest of justification? No such economic issues are presented by the differences among our States, with their free trade; so that the alleged analogy for an international court which is sought to be found in our Supreme Court deciding cases between the States—disputes of a rather limited class, pertaining usually to boundaries and minor matters—is quite misleading and unwarranted. While international tribunals have settled many important issues—notably the Alabama Claims, the North Atlantic Fisheries dispute, dozens of boundary and claims cases—which might have led to war, they have not settled and cannot settle those larger economic and political issues which lie at the foundation of most modern wars.

2. Another common assumption is that the nations seriously desire an international court for the settlement of their disputes. This again I believe to be erroneous—at least, experience would indicate that very often it has no basis in fact. Nations desire an international court—and have no difficulty in establishing one *ad hoc* when the occasion arises—when the dispute is unimportant or would not justify the expense of war; or when political considerations dictate submission to arbitration rather than recourse to war—in short, when they feel they have more to gain by arbitration or other form of peaceful settlement, such as mediation, than by war.

A few modern instances will suffice to give evidential support to this conclusion. In 1894 a plebiscite was to have been held in accordance with the Treaty of Ancon between Peru and Chile to determine the sovereignty of the provinces of Tacna and Arica, now in the possession of Chile. The plebiscite has never been held. Continued efforts by Peru to submit this question to arbitration or to commit Chile to the principle of arbitrating international disputes have been unavailing. The reason is obvious. So long as Chile has the physical strength to hold what she has, she has little interest in inviting the uncertain, and what to her may seem the academic hazards of arbitration. This case, like many others, would indicate the need for compulsory arbitration; but, as will presently appear, the larger powers are still averse to being compelled to adopt peaceful measures when other measures seem to them more expedient or profitable.

In 1914 two Mexican subordinate officers were alleged to have insulted the American flag at Tampico. The facts were in dispute, and are to this day, for the original telegram of the American Admiral in command has not been published. At that time, we had already negotiated and were still engaged in negotiating treaties with various countries, the so-called Bryan treaties, by which incidents giving rise to differences between the contracting parties were to be submitted to a commission of inquiry, pending whose report hostilities were to be suspended for the period of a year. No better opportunity for the application of this principle could have been pre-

sented than the Tampico incident. Yet President Wilson, irritated at the obstinate refusal of President Huerta to abdicate his office, and oblivious to his own declared principle of a peaceful settlement of disputes, found in the incident that overt act which was deemed to justify the making of war on Mexico and the sacrifice of the lives of numerous Mexicans and Americans at Vera Cruz.

More recently, Austria, irritated at the continued efforts of Servia to create disaffection in and detach from the Empire her southeastern Slav provinces, found in the assassination of Archduke Ferdinand so great a strain upon her patience that she refused to tolerate a judicial settlement of the differences with Servia, and launched upon an expedition of chastisement which ultimately engulfed the world and led to her own ruin and that of a large part of Europe.

And now France, gravely injured, disappointed and belligerent, finds almost irresistible the impulse to invade and crush Germany, and resents—her press, with bitter denunciation—any effort to adjust the issues between the two countries by mediation or arbitration. The fact that the enterprise may again engulf Europe in war and ruin victor and vanquished alike beyond hope of recovery appears to be a secondary consideration only.

These illustrations are cited to dispel the illusion that nations in dispute desire judicial machinery for the settlement of their differences, and that the great need of the world to bring about such settlement is an international court. On the contrary, nations that believe they have more to gain or are likely to be more successful in war than in arbitration or peaceful settlement, prefer the arbitrament of the sword and resent the efforts of mediators to frustrate the accomplishment of their objects. Indeed, it happens often that the greater the belief in the righteousness of the national cause the less disposition there is to submit it to peaceful arbitrament; and it is not unknown that the strength of the conviction of righteousness is in direct ratio to the national military and economic resources. It is not a world court that is needed, but the intelligence to realize that war is in practically all cases the most wasteful and ultimately the most senseless method of settling international conflicts of interest. But so long as the causes of war remain unchecked and uncontrolled, there is little hope for a decrease of war; and, if I judge correctly, the Treaty of Versailles, if permitted to remain the charter of the European settlement, condemns the coming generations to frequent and recurring wars.

3. Much propaganda has been spread to prove the necessity for an international court in continuous session, and much labor has been expended on actually bringing into being an international court of justice. The effort has been accompanied by an increasing number of treaties of arbitration among the nations. The greatest difficulty in carrying out the plan, however, is not how to execute the award of an international tribunal, to which subject much unnecessary zeal and earnestness have been devoted, but how to persuade and, if needed, compel, nations to submit their disputes to a court. My research fails to disclose more than half a dozen cases, among thousands, in which the award of an international tribunal has been refused execution by the losing nation. These have nearly always been small nations, the dispute a question of boundaries, and the ground of refusal an alleged error of jurisdiction. In view of the extremely unimportant nature of the question, therefore, it would seem unprofitable to spend much time in discussing it.

What is important, however, is the inability to compel unwilling nations to submit to a court. It has already been shown that the very nature of the serious conflicts of interest among nations makes a submission to judicial settlement hardly practicable, or at least exceedingly difficult. Yet this is not the only reason why nations, in concluding arbitration treaties, nearly always exclude from the obligation of arbitration questions of independence, national honor, and vital interest—the only questions that are of any importance, and the only questions which could conceivably lead to war. Existing treaties of arbitration among the greater powers, therefore, constitute obligations to submit to arbitration anything they wish to submit, and nothing more. The Covenant of the League of Nations, mistakenly hailed by many good people as a hopeful substitute for war, carefully avoided any change in this purely voluntary submission to arbitration. The Permanent Court of Arbitration at The Hague, created in 1899 and strengthened in 1907, and still the most practical achievement by way of an international court, leaves submission voluntary. More recently, under the auspices of the League of Nations, a body of distinguished jurists conceived and proposed a plan of a court of international justice, in permanent session, with compulsory jurisdiction. Hardly had the plan been presented to the Assembly of the League of Nations at Geneva, than the Council—consisting principally of the Great Powers—decided that the compulsory feature of the jurisdiction of the court was an undesirable innovation. Nations that have the political or economic stimulus to make and the physical ability to enforce their decisions prefer to be the judges of their own causes, and the sheriffs as well.

Nor can I see that a court of permanent judges is preferable, in the present organization of the nations, to a court of judges selected by the litigating nations from a panel. So long as jurisdiction is entirely voluntary, more actual arbitration will result from a court of judges selected by the parties *ad hoc* than from a court in whose composition the litigating nations had no choice; for a nation that does not have to submit its dispute with another will surely not submit it to a court, to any of whose judges it takes exception. The international court of justice, therefore, seems to me much less practical than the existing Permanent Court of Arbitration at The Hague, which has already decided nearly twenty cases, and to which the United States and Norway have recently submitted a dispute arising out of the requisitioning of Norwegian vessels by the United States.

Nor is a judicial decision of necessity a guaranty of peace. One need but refer the student of American history to the Dred Scott decision of the United States Supreme Court to be convinced of this. That decision made the Civil War inevitable. Other cases might be mentioned. Some years ago Ecuador and Peru submitted their boundary dispute to the arbitration of the Council of State of Spain. After deliberating on the matter, the Council of State let it become known that their award, still unannounced, placed the line at a point

which would give much territory to Peru and leave Ecuador with a very small area. Both countries realized that the award, if handed down, would precipitate war between the two nations, so, at the suggestion of the litigating countries, the award has been withheld by the Spanish Council of State.

Just what was meant, therefore, by the campaign announcement last fall that a scheme for a world association would be constructed around an international court for the settlement of disputes between nations has been something of a mystery. One is led to suspect that its advocates had not thought deeply on the subject. As a plan for an ordered community life among the nations it holds out even less hope than the League of Nations; and the belief that the latter holds out little beyond a prospect of entanglement of the United States in the intrigues of Europe is, I think, entirely justified.

From what has been said, it may have become apparent that the value and utility of an international court are limited by the prevailing conditions of international relations and the factors and forces which dictate and fashion those relations. They make it evident that an international court cannot settle those larger issues which lie at the foundation of most international conflicts, and that nations that have the physical power still prefer to be the judges of their own causes and resist any plan to bring about a compulsory submission of disputes. If compulsion could be brought about to submit even the narrow range of questions that are susceptible of judicial settlement, such as pecuniary claims for injuries to individuals, questions of interpretation of treaties, and other questions of law, with a stipulation that these cannot be considered questions of national honor or vital interest, some progress will have been made. But the difficulty of obtaining official acquiescence even in this mild proposal will indicate the enormity of the greater task of promoting a more general resort to judicial methods of settling international disputes.

If I judge correctly the temper of the world, there is less disposition now to adopt the civilized methods of adjusting conflicting interests than there has been for generations. Few people realize or are willing to contemplate the facts that six years of devastating war and devastating peace have undermined the moral foundations of many densely populated areas of the world; and that there is now more faith in the efficacy of force, and less faith in law, as a solution for international differences, than there has been since the days of Napoleon. The forces of disintegration are apparently overpowering the forces of reconstruction, due primarily, I believe, to the short-sighted policy of the present managers of European political affairs.

So long as that condition prevails, discussion of the enlarged functions of an international court will be to a great extent academic and theoretical. Yet, however limited the functions of such an international court may be, I am inclined to believe that in the absence of compulsory jurisdiction, more practical results can be achieved from the existing so-called Permanent Court at The Hague, selected by the litigating nations from a panel of judges, than from a court of fixed judges in constant session—however strong in theory may be the conceptional appeal of a supreme court of the world.

THE JAPANESE FIGHT FOR DISARMAMENT

By ISAMU KAWAKAMI

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SINCE THE PUBLICATION of Senator Borah's resolution for the purpose of bringing about an understanding between America, Great Britain, and Japan concerning a naval holiday for five years, there has been much discussion, both for and against this program, in all the newspapers and magazines in Japan. The naval holiday program was not new to Japan, neither to America nor to Great Britain, as the subject had previously been discussed several times by the press. Senator Borah's resolution, however, brought the matter to a head.

In the Japanese Imperial Diet the Seiyukai and the Kenseikai, the two largest political parties, invariably oppose each other on all vital questions. How much more should this have been true in the case of an important bill such as this? No one expected the Kenseikai to join hands with its rival in defeating Mr. Ozaki's resolution. Yet this is what happened; the opposing parties united, forgetting for once their historical rivalry.

Was this resolution, however, banished from the minds of the Japanese people when it was so easily banished from the House? What attitude are the people of Japan taking toward the resolution? What is the prevailing tone of the discussion in the press of Japan today? These, together with the reason for the defeat of Mr. Ozaki's resolution, are the questions which this article proposes to treat.

The presentation to the Japanese Parliament, on February 10, 1921, of Mr. Yukio Ozaki's resolution favoring disarmament may prove to be an historical event which will separate Old Japan from New, though his resolution was overwhelmingly defeated.

The defeat of Mr. Ozaki's resolution in Parliament was, to say the least, amazing and disappointing to the Japanese people in general, who have enough good will and common sense to support the movement toward world peace. Although those who thoroughly understood the political situation expected this action on the part of Parliament, they did not forecast the extent of the defeat. The naval holiday program is an important one and deserves the careful attention of the world, and a more sincere discussion at least was expected.

Mr. Ozaki, of course, felt the need of at least a small navy, but realized that naval competition would reduce Japan far below her normal power, because of her scanty resources and industrial capacity. He argued, therefore, even from the standpoint of an adequate defense of the country, that such a naval holiday would be beneficial to Japan. Mr. Ozaki also believes there is no great military power from which war is to be feared at present. Japan should, therefore, also greatly decrease her army, or at least should support the League of Nations in plans for general disarmament.

Mr. Ozaki's plan did not satisfy the leading liberals in this country, because they felt it to be lukewarm, and so the abstinacy of the members of Parliament in support of the armament program was a great surprise, even to those who understand the political situation of today.